

Application Number 10/670,595  
Responsive to Office Action mailed August 21, 2006

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**REMARKS**

This Amendment is responsive to the Office Action dated August 21, 2006. Applicant has amended claims 1, 3, 4, 6-8, 11-17 and 20-31<sup>1</sup>, cancelled claims 9 and 10, and added new claims 32-34. Claims 1-8 and 11-34 are pending.

**Claim Objections**

In the Office Action, the Examiner objected to the claims because they were incorrectly numbered. Applicant has amended claims 22-32 as originally filed to be claims 21-31, thereby correcting the numbering. Applicant respectfully requests withdrawal of this objection.

**Claim Rejection Under 35 U.S.C. § 112**

In the Office Action, the Examiner rejected claims 4 and 16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner rejected claim 4 because the term "the wireless communication" in the claim as previously presented lacked antecedent basis. Applicant has amended claim 4 to recite "the communication link," which find antecedent basis in independent claim 1.

With respect to claim 16, The Examiner noted that the claim recites "a second indicator," and questioned where the first indicator is recited. Applicant respectfully directs the Examiner's attention to the fourth line of claim 11, from which claim 16 depends, which recites "a first indicator" of the claimed system.

Applicant submits that claims 4 and 16 as now presented particularly point out and distinctly claims the subject matter, as required by 35 U.S.C. § 112, second paragraph. Applicant respectfully requests that the rejection of claims 4 and 16 under 35 U.S.C. § 112, second paragraph, be withdrawn.

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<sup>1</sup> Claims 21-31 were numbered claims 22-32 as originally filed, but have been renumbered by amendment.

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**Claim Rejection Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1, 2 and 5-10 under 35 U.S.C. § 102(b) as being anticipated by US 4,504,153 to Schollmeyer et al. (Schollmeyer), and claims 17-20 under 35 U.S.C. § 102(b) as being anticipated by US 6,702,146 to Varis (Varis). Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the amended claims. The applied references to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b), and provide no teaching that would have suggested the desirability of modification to include such features.

*Claims 1, 2 and 5-10*

For example, Schollmeyer fails to disclose or suggest a base station having a local wireless communication link to a portable cap assembly, as required by independent claim 1 as amended. Further, Schollmeyer fails to disclose or suggest a base station that receives compliance data that indicates whether a sensor of the cap assembly sensed that a user has taken a plurality of doses of the medication in compliance with medication-taking data from the cap assembly via the local wireless communication link, as required by amended claim 1. Also, Schollmeyer fails to disclose or suggest a base station that presents the compliance data via a user-interface, as required by amended claim 1.

The Examiner identified host computer 9 of the Schollmeyer, which is associated with programmer station 5, as meeting the requirement of a base station in claim 1 as previously presented. However, contrary to the above-identified requirements of claim 1, host computer 9 is coupled to locking cap 4 by a wired connection, rather than a local wireless connection as required by claim 1.<sup>2</sup>

Additionally, Schollmeyer does not suggest that the host computer 9 receives compliance data from cap 4, or presents compliance data to a user. The only data the Schollmeyer suggests is received by host computer 9 from cap 4 is prescription information and patient medical history information.<sup>3</sup>

The prescription information transmitted from the cap 4 to the host computer 9 in Schollmeyer is the same information provided from the host computer to cap to control

<sup>2</sup> Schollmeyer, col. 4, ll. 39-52 (electrical connection with data clock connector and RS232 interface).

<sup>3</sup> Schollmeyer, col. 2, ll. 58-67 and col. 5, ll. 19-29.

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prompting, and is reflected back for the purpose of error checking. The prescription information in Schollmeyer does not indicate whether a sensor of a cap assembly sensed that a user has taken a plurality of doses of the medication in compliance with medication-taking data, as required by claim 1. Thus, the prescription taking information in Schollmeyer is not compliance data within the meaning of claim 1,

Further, the only examples of patient medical history information provided by Schollmeyer are the identity of other medications taken by the patient and patient allergy information. Neither of these examples is in any way suggestive of compliance data that indicates whether a sensor of a cap assembly sensed that a user has taken a plurality of doses of the medication in compliance with medication-taking data, as required by claim 1. Thus, Schollmeyer fails to disclose or suggest a base station that receives compliance data that indicates whether a sensor of the cap assembly sensed that a user has taken a plurality of doses of the medication in compliance with medication-taking data from the cap assembly, as required by independent claim 1.

As another example, Schollmeyer fails to disclose or suggest a base station that transmits compliance data to a remote location through a network, as required by claim 5. In rejecting claim 5, the Examiner cited a passage of Schollmeyer that states that host computer 9 may be connected to other remote computer. However, Schollmeyer does not teach or suggest that the host computer 9 transmits any data received from cap 4, much less compliance data, to these computers.

Additionally, Schollmeyer does not disclose or suggest a collar between the cap and an opening of the container that includes a memory for storing compliance data, as required by claim 6, as amended. The Examiner acknowledged this deficiency of Schollmeyer in the rejection of claim 22, which recited a collar including a memory as originally filed. The Examiner relied on US 6,771,165 to Burg II et al. (Burg) as teaching a collar including a memory. The Examiner argued that it would have been obvious to modify Schollmeyer to include the Burg collar to contain these components enable the collar to freely rotate. Applicant suggests that this reasoning is insufficient to establish a prima facie case of obviousness with respect to amended claim 6 for several reasons.

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First, Applicant notes the Burg collar is not located between the cap and an opening of the container, as required by amended claim 6.<sup>4</sup> Thus, when modified to include the Burg collar as suggested by the Examiner, the Schollmeyer device would still fail to meet the requirements of claim 6.

Further, "to contain these components" is not a motivation. The memory of the Schollmeyer cap is already contained, and therefore does not require a collar in order to be contained. Thus, a person of ordinary skill would not have been motivated to include these components in a collar simply for the purpose of containing them. Additionally, with respect to the "freely rotate" motivation suggested by the Examiner, the Schollmeyer cap is already capable of rotation in order to remove the cap from the medicine container and, moreover, Schollmeyer teaches away from free rotation for the purpose of preventing unscheduled access to the medication therein.<sup>5</sup> Thus, a person of ordinary skill would not have been motivated to and, in fact, would have consciously avoided modifying the Schollmeyer cap to include a freely rotating collar as taught by Burg.

As another example, Schollmeyer fails to disclose or suggest a moveable base movable relative to the container while the collar is attached to the container from a first position in which the opening is substantially covered to a second position in which the opening is exposed for dispensing medication from the container, as required by claim 7, as amended. Collar 4A of the Schollmeyer cap does not include any component that is movable relative to the container while the collar is attached to the container from a first position in which the opening is substantially covered to a second position in which the opening is exposed for dispensing medication from the container. Instead, collar 4A and the rest of cap 4 taught by Schollmeyer must be removed from the container to expose the opening of the container. Movement of the ratchet mentioned at col. 3, ll. 29 does not cover or expose the opening.

Schollmeyer fails to disclose each and every limitation set forth in claims 1, 2 and 5-8. For at least these reasons, the Examiner has failed to establish a prima facie case for anticipation of these claims under 35 U.S.C. § 102(b). Withdrawal of this rejection is requested.

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<sup>4</sup> Burg, FIG. 6.

<sup>5</sup> Schollmeyer, col. 3, ll. 29-33 and col. 5, ll. 55-68.

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*Claims 17-20*

The Examiner rejected claims 17-20 as being anticipated by Varis. However, Varis fails to disclose or suggest a base station in local wireless communication with the dispenser, the base station for receiving the compliance data from the dispenser, and presenting the compliance data to a user, as required by independent claim 17, as amended. The Examiner argued that GSM module 62 of the Varis system is a base station. However, contrary to the requirements of amended claim 17, GSM module 62 of Varis is not in local wireless communication with dispensing device 35, and does not display compliance information received from dispensing device 35 to a user. Instead, GSM module 62 is a components electrically coupled to dispensing device 35 that allows wireless communication with remote devices. Further, Varis never suggests that GSM module 62 includes a display or in any way interacts with a user. Thus, GSM module 62 does not meet all of the elements required by claim 17 with respect to the recited base station.

Varis fails to disclose each and every limitation set forth in independent claim 17. For at least this reasons, the Examiner has failed to establish a prima facie case for anticipation of claims 17-20 under 35 U.S.C. § 102(b). Withdrawal of this rejection is requested.

**Claim Rejections Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected, under 35 U.S.C. § 103(a): claim 3 as being unpatentable over Schollmeyer in view of Weisman (US 6,302,295); claim 4 as being unpatentable over Schollmeyer in view of Weisman and further in view of Sagar (US 6,604,650); claims 11-16 as being unpatentable over Schollmeyer in view of Sagar; claims 22-23 and 25-27 as being unpatentable over Schollmeyer in view of Burg; claim 24 as being unpatentable over Schollmeyer in view of Berg, and in further view of Varis; and claims 28-32 as being unpatentable over de al Hueraga (US 6,032,155) in view of Sagar.

Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

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*Claims 3 and 4*

Claims 3 and 4 are dependent upon independent claim 1, and are patentable over Schollmeyer for at least the reasons discussed above with reference to independent claim 1. Furthermore, neither Weisman, nor Sagar, provides any teaching that overcomes the deficiencies of Schollmeyer with respect to independent claim 1 that were discussed above. For at least this reason, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 3 and 4 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

*Claims 11-16*

As amended, independent claim 16 requires a base station in local wireless communication with the dispenser, the base station for receiving the compliance data regarding consumption of contents of the dispenser from the dispenser, and displaying the compliance data to a user. As acknowledged by the Examiner, Schollmeyer fails to disclose or suggest this requirement. The Examiner argued that Sagar provides the missing disclosure.

However, Sagar also fails to disclose or suggest a base station that receives compliance data regarding consumption of contents of the dispenser from the dispenser, and displays the compliance data to a user. Sagar teaches that a PDA, PC, or wireless phone may receive prescription information relating the intended dosage and interval for the purpose of reminding the patient, rather than data regarding consumption of contents of the dispenser for the purpose of tracking compliance as recited by claim 11. Thus, even if combined as suggested by the Examiner Schollmeyer and Sagar still fail to disclose or suggest the requirements of independent claim 11.

Further, for the reasons discussed above with reference to claims 6 and 7, Schollmeyer and Burg fail to disclose or suggest the requirements of claims 12 and 13. Sagar does not provide any teaching that would overcome the above-identified deficiencies of Schollmeyer and Burg with respect to the requirements of claims 12 and 13.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 11-16 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

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*Claims 21-26*

Similar to claim 6, discussed above, amended independent claim 21 requires a collar between the cap and an opening of the container that includes a memory for storing compliance data. Further, similar to claim 7, discussed above, amended claim 26 requires a moveable base movable relative to a stationary base while attached to the stationary base from a first position in which the opening is substantially covered to a second position in which the opening is exposed to dispense medication. For the reasons discussed above with respect to claims 6 and 7, Schollmeyer and Burg fail to disclose or suggest these requirements of claims 21 and 26. For at least those reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 21-26 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

*Claims 27-31*

Amended independent claim 27 requires presenting compliance data to the user via a base station which received the compliance data from a portable medication container by local wireless communication. Neither de la Huerga, nor Sagar discloses or suggests this requirement of claim 27.

As discussed above with reference to claim 11, Sagar fails to disclose or suggest any device that receives compliance data from a medication container, much less presents the compliance data to the user. Furthermore, although de la Huerga mentions delivering consumption information from an information device to one or more databases, de la Huerga does not teach or suggest transmitting the information to a local device that presents the information to a medication-taking user. Thus, even when combined, the applied references fail to teach or suggest the requirements of independent claim 27.

For at least this reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 27-31 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

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**New Claims:**

Applicant has added claims 32-34 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions, for at least the reasons discussed above with respect to the claims from which they depend. No new matter has been added by the new claims.

**CONCLUSION**

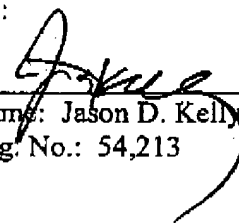
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

1-22-07

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